

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

ROY E. HANSON JR. MFG.,

Employer

and

Case 21-RC-20856

WESTERN STATES INDEPENDENT
NATIONAL UNION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings¹ made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act; and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ At the hearing, because it is the incumbent union, intervenor status was granted to United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO-CLC, hereinafter called Intervenor.

3. Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved herein claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following unit is an appropriate unit for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production employees and truck drivers whose duties do not require an overnight stay employed by the Employer at its facilities located at 1924 Compton Avenue, Los Angeles, California, 1960 South Alameda Street, Los Angeles, California, and 1957 Long Beach Avenue, Los Angeles, California; excluding all other employees, plant clerical employees, professional employees, truck drivers whose duties require an overnight stay, guards and supervisors as defined by the Act.

ISSUE AND CONCLUSION

The sole issue presented is whether the Petitioner is a labor organization within the meaning of the Act. The Intervenor contends that the Petitioner is not a labor organization because it does not exist for the purpose of dealing with employees' wages, hours, and other terms and conditions of employment, but rather, exists solely for the personal benefit of its founder, Wesley Guajardo (hereinafter referred to as Guajardo). The Employer did not take a position on the issue. For the reasons discussed below, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

FACTS²

The record established that the Employer and the Intervenor have had a collective-bargaining history spanning several decades, where the Intervenor has been the exclusive collective-bargaining representative of the petitioned-for unit.

The Petitioner has been in existence since May 9, 2003. On that day, employees formed the organization, voted to adopt a constitution, and elected officers. The stated purpose of Petitioner is to represent employees with employers concerning employees' terms and conditions of employment. Since its inception, the Petitioner has met with employees at least three times a year: in 2003, the Petitioner held three membership meetings; in 2004, it held four membership meetings; and in 2005, three membership meetings have been held as of September 24, 2005. The record reveals that employees of the various employers attend and participate in these meetings which are conducted at a building owned by Tri-City Labor Community Food and Assistance Program, a charity organization (hereinafter referred to as Tri-City).³

The record discloses that Petitioner has engaged in efforts to organize the employees of the Employer, Cal Strip Corporation and other employers, but that it has not been recognized or certified as the exclusive collective-bargaining representative of any unit. The Petitioner has never entered into a collective-bargaining agreement with an employer to represent employees regarding terms and conditions of employment, but it has filed petitions for representation, as in this matter and in Case 21-RC-20658.

² I have taken judicial notice of the proceedings in Case 21-RC-20658, where the exact issue was raised by the Intervenor regarding the Petitioner. Relevant facts in that matter have been incorporated in this decision.

³ Guajardo has been an officer of Tri-City since 2000.

ANALYSIS AND DISCUSSION

Section 2(5) of the Act defines the term “labor organization” as follows:

“...any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

Three elements must be met to establish the status of a labor organization under the Act. First, it must be an organization or group of any kind. Second, employees must participate in the organization. Third, the organization or group must exist, in whole or in part, to deal with employers concerning wages, hours, or other working conditions.

AutoZone, Inc., 315 NLRB 115, 116 (1994).

In this matter, the Petitioner has met all three elements. The Petitioner consists of officers, and employees who attend union meetings with the Petitioner at least three times a year. On May 9, 2003, employees attended a union meeting, and elected the Petitioner’s officers and adopted a constitution, which has not been modified. By organizing employees and filing representation petitions, the Petitioner demonstrated that it exists, in whole or in part, for the purpose of dealing with employers concerning terms and conditions of employment of employees. Based on the above, and the record as a whole, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The Intervenor asserts that the Petitioner is not a statutory labor organization inasmuch as it exists solely for the personal benefit of its founder, Guajardo. In this regard, the Intervenor relies on the Board’s decision in Marina Associates, d/b/a Harrah’s Marina Hotel and Casino, 267 NLRB 1007 (1983), for the proposition that the findings of a Civil Court judge in a matter against Guajardo, Tri-City and other individuals, establishes that the

sole purpose of the Petitioner is for the personal gain of Guajardo. The Intervenor's reliance on Marina Associates is misplaced.

In Marina Associates, the Board held that the petitioner was not able to show that it was an organization in existence for the purpose of dealing with employers concerning terms and conditions of employment of employees. Id. at 1007. The record in that case established no evidence that the petitioner conducted employee meetings, held any election of officers, or that employees participated. There was evidence that the petitioner specifically failed and refused to abide by subpoenas calling for documents that would have clarified the issue. Thus, the Board in Marina Associates specifically refused to rely on the Regional Director's finding that "the record is devoid of evidence that the Federation observes any of the most fundamental practices of a democratic governance." Id. at 1007, fn. 2. Moreover, the Board did not adopt the Regional Director's rationale that the union was not a labor organization because the officers were not protecting and advancing the interests of employees. Id. at 1007.

The Civil Court judgment involving Guajardo and Tri-City bears on the legality of a real property transfer, and not whether or not the Petitioner is a legitimate labor organization. Moreover, unlike in Marina Associates, the record established that Petitioner was created and is in existence in whole or in part for the purpose of dealing with employers regarding employee terms and conditions of employment. Accordingly, the intervenor's contention is rejected.

There are approximately 43 employees in the unit found appropriate.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the times and places set forth in the Notices of

Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Western States Independent National Union; United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), AFL-CIO, CLC; or neither.**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the

date of this Decision, two copies of alphabetized election eligibility lists, for each unit involved herein, containing the full names and addresses of all eligible voters shall be filed by the Employer with the undersigned, who shall make the lists available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before November 22, 2005. No extension of time to file the lists shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirements here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20 (c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notices.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5:00 p.m., EST, on November 29, 2005.

DATED at Los Angeles, California, this 15th day of November 2005.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board